



# **CITY OF HAYWARD**

## **AGENDA REPORT**

AGENDA DATE 02/08/05

AGENDA ITEM 4

WORK SESSION ITEM \_\_\_\_\_

**TO:** Mayor and City Council

**FROM:** City Attorney

**SUBJECT:** Amendment to the Trust Provision of the Mobilehome Space Rent Stabilization Ordinance

### **RECOMMENDATION:**

It is recommended that the City Council introduce the attached Ordinance amending the Mobilehome Space Rent Stabilization Ordinance to remove the trust provision and add an affirmative defense to a possible eviction proceeding.

### **DISCUSSION:**

The trust provision language contained in section 5(c) of the Ordinance was added in 1994 in response to the federal court's ruling in *U.S.A. v. City of Hayward*. Specifically, the judge concluded that the City could be held liable for an erroneous ruling by an arbitrator conducting hearings pursuant to the City's Ordinance. As a result of the decision in U.S.A., the City was required to pay more than \$100,000 to the United States Justice Department. At the request of the Council, mobilehome park owners and representatives from the mobilehome community met with City representative to address the issues raised by the U.S.A. decision and other concerns regarding the Ordinance. The result of a series of meetings, conducted over eight months, was bipartisan support for amendments to the Ordinance including the trust provision now contained in section (c). Section 5(c) of the Ordinance requires the residents of a mobilehome park who have filed a petition for rent review to pay the disputed space rent amount to the park owner in trust after a state-required 90-day notice period has passed even if a hearing challenging the request is in progress and the final allowable space rent has not been determined.

On Tuesday, September 21, 2004, members of the Amendments Committee of the Hayward Mobilehome Owners Association met with staff and proposed an amendment to the trust provision in the Ordinance. The amendment was scheduled to be heard at the October 19<sup>th</sup> City Council meeting. The item was removed from the agenda at the request of HMOA. On January 20, 2005, the committee met with staff to discuss various methods to protect mobilehome residents from possible eviction for the non-payment of a challenged space rent increase prior to the completion of a rent review hearing pursuant to the City's Mobilehome Space Rent Stabilization Ordinance.

The committee feels that the existing provision works to create a hardship on mobilehome residents when the proposed rent increase is a large percentage of the overall space rent and the resident is required to pay the challenged amount to the park owner in trust. Additionally, the present language could expose mobilehome residents to possible eviction by the park owner if the resident fails to pay the proposed space rent increase to the park owner in trust.

Past experience indicates that mobilehome residents make individual decisions regarding the payment of a proposed space rent increase in trust to the park owner. They may consider the amount of the proposed space rent increase and their ability to pay that amount when deciding whether to pay the proposed space rent increase. In past hearings, it appears that a number of mobilehome residents did not pay the proposed space rent increase to the park owner in trust even though the trust provision required them to do so. In those situations, the park owner did not attempt to enforce the trust provision against the non-paying residents or initiate eviction proceedings to remove them from the park.

### Removing the Trust Provision

One method of reducing the hardship would be to remove the trust provision from the Ordinance and establish the payment date of the proposed space rent increase as the date of the hearing officer's decision on the merits of the increase. This would benefit mobilehome residents by not requiring them to pay any space rent increase until a hearing officer has made a decision regarding the validity of the proposed space rent increase. It also will remove any perceived threat of eviction experienced by mobilehome residents who receive a space rent increase notice, since the proposed space rent would not be due until after the hearing officer rendered a decision.

A consequence of removing the trust provision is the potential hardship created by requiring a resident who deferred the proposed increase to pay a larger lump sum of money to the park owner when the hearing officer establishes the actual amount of the increase and determines that the right to collect the rent accrued at the time the notice was sent to the residents plus the 910-day notice period required under state law. If a hearing extended beyond several months, the accrued space rent owed to the park owner could be considerable.

In addition, if the trust provision is removed, the City will need to bring petitions for rent review to hearing quickly to avoid a possible due process violation of the park owner's right to a timely hearing and to prevent the accrual of expensive space rent increases. This could significantly shorten the time the parties will have to meet and confer. The meet and confer provision was added to the Ordinance to facilitate settlement discussions informally without the need for an expensive hearing. Additionally, the meet and confer provided the residents time to evaluate the support documentation and discuss their concerns with the park owner.

Finally, since state law allows a park owner to notice a space rent increase and begin collecting it after the 90-day notice period expires, there is concern that attempting to redefine the effective date of the increase from day 91 to the date the hearing officer renders his decision may conflict with state law. If a court determined there was a conflict, the protection provided to mobilehome residents would be lost and the accrued space rent would be calculated from the 91<sup>st</sup> day rather than the decision date resulting in a larger accrued amount. Additionally, the City could be liable to the park owner for delaying his/her right to collect the proposed space rent increase.

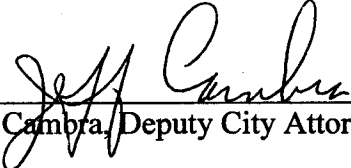
## Non-Eviction Amendment

In order to provide additional protection to mobilehome residents, the proposed amendment includes an affirmative defense to an eviction based on the non-payment of contested space rents being challenged by residents in the rent review hearing process. This non-eviction provision will be required to appear in the notice of space rent increase so that mobilehome residents will be aware of the Ordinance protections against evictions, thereby reducing any fear of eviction.

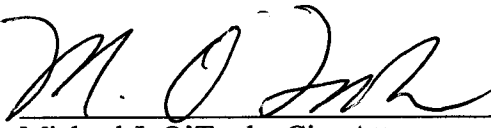
## CONCLUSION

Pursuant to the direction of Council, given at its meeting of February 1, 2005, Staff has prepared the amendments necessary to remove the trust provision contained in the Mobilehome Space Rent Stabilization Ordinance and add an affirmative defense to an eviction based upon the nonpayment of a proposed space rent increase. It is recommended that the Council introduce the attached Ordinance.

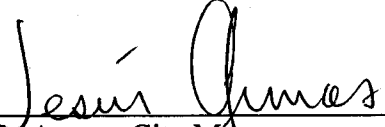
Prepared by:

  
\_\_\_\_\_  
Jeff Cambra, Deputy City Attorney

Recommended by:

  
\_\_\_\_\_  
Michael J. O'Toole, City Attorney

Approved by:

  
\_\_\_\_\_  
Jesus Armas, City Manager

Exhibits:

# DRAFT

ORDINANCE NO. \_\_\_\_

AN ORDINANCE AMENDING ORDINANCE NO. 89-057 C.S., AS  
AMENDED, THE MOBILEHOME SPACE RENT STABILIZATION  
ORDINANCE

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Section 4(b)(2) of Ordinance No. 89-057 C.S., as amended, is further amended to add Subsection (v) as follows:

“(v) the following statement: Pursuant to Section 11 of the Mobilehome Space Rent Stabilization Ordinance, a mobilehome park owner may not attempt to recover possession of a mobilehome space based on the failure of the resident to pay the contested portion of the proposed space rent increase.”

Section 2. Section 4(e) of Ordinance No. 89-057 C.S., as amended, is further amended as follows:

“(e) Improper Collection of Rents. A Park Owner who fails to provide a Tenant or Prospective Tenant the information, documents, or notices required by this Section shall not be entitled to collect any rent increase otherwise authorized by this ordinance from that Tenant or Prospective Tenant nor to any rent increase that might otherwise be awarded by an Arbitrator and such failure by the Park Owner shall be a defense in any action brought by the Park Owner to recover possession of a mobilehome space or to collect any rent increase from the Tenant.”

Section 2. Section 5 (c) of Ordinance No. 89-057 C.S., as amended, is further amended by removing the language as follows:

“(c) Upon the filing of a petition, the proposed rent increase shall be paid to the Park Owner in trust pursuant to the provisions of Section 10 (c) of this ordinance until the petition is abandoned, or the rent increase is sustained by the Arbitrator, or the rent increase is sustained by a court of final jurisdiction.”

Section 3. Section 10 (a) of Ordinance No. 89-057 C.S., as amended, is further amended as follows:

“(a) If a final decision by an Arbitrator finds that a proposed increase or any portion thereof that was previously inoperative is justified, the Tenant shall pay the amount found justified to the Park Owner in accordance with the decision of the Arbitrator

including the effective date of the proposed space rent increase.”

Section 4. Sections 10 ( c) (1), (2), and (3) of Ordinance No. 89-057 C.S., as amended, is removed in its entirety.

Section 5. Section 10 (d) of Ordinance No. 89-057 C.S., as amended, is removed in its entirety.

Section 6. Section 11 of Ordinance No. 89-057 C.S., as amended, is further amended as follows:

“The failure of a Tenant to pay a space rent increase which is the subject of a Petition for Space Rent Arbitration as provide for under Section 5 of this ordinance shall not be a basis for the Park Owner to recover possession of a mobilehome space. Such refusal to pay may be a defense in any action brought to recover possession of a mobilehome space or collect the rent increase. “

Section 7. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 8. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption

INTRODUCED at a regular meeting of the City Council of the City of  
Hayward, held the \_\_\_\_\_ day of \_\_\_\_\_, 2004, by Council Member \_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward,  
held the \_\_\_\_\_ day of \_\_\_\_\_, 2004, by the following votes of members of said City  
Council.

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward